IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 316

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

Respondent's argument is predicated in large part upon its erroneous, misleading and incomplete statement of the case. The defects in respondent's statement, which are pointed out under Point II of this response, serve as effective reply to much of respondent's argument and renders elaboration in that regard unnecessary.

At page 6 of its brief in opposition respondent states that Announcement No. 1 was "in effect" a declaration "that no subsidies were to be paid with respect to meat held in inventory at the close of business on October 14, 1946." More accurately paraphrased, respondent, by its Announcement No. 1, declared that:

> Although we have honored practically all of your subsidy claims on livestock slaughter operations had

> up to and including October 14, 1946, irrespective of resulting meat inventory on hand as of that time, just as we paid like subsidies under similar circumstances when decontrol occurred in June 30, 1946; and although you have already passed back the benefits to be derived from the subsidy to the livestock producer by purchasing livestock at the applicable live stock price ceilings and within the applicable minimum-maximum livestock price ranges, we have now decided, five and one-half months after the termination of Livestock Slaughter Regulation No. 10, to impose a condition on the payment of livestock slaughter subsidies that unless you had no meat inventory on hand on October 14, 1946, we will disallow your livestock slaughter subsidy claims and make you pay back those subsidy payments received by you for slaughter operations as to which inventory remained on hand on October 14, 1946.

The "Announcement" imposes a condition upon payment of subsidies relating to the production or sale of an agricultural commodity, to-wit: livestock, not authorized by the lawful regulations, directives, and statutes. Therefore, petitioner claims that "Announcement No. 1" runs afoul of both the letter and intent of Section 2(m) of the Price Control Act, and that petitioner, as person aggrieved by the imposition of this unlawful condition or penalty, has a statutory right under Section 2(m) to contest its legality in the District Court. Respondent's suggestions to the contrary notwithstanding, petitioner does not challenge but affirmatively relies on the operating statutes, directives and regulations.

I.

RESPONDENT'S BRIEF IN OPPOSITION CONFIRMS THE POINT IN THE PETITION THAT THIS CASE INVOLVES IMPORTANT FEDERAL QUESTIONS WHICH WERE ERRONEOUSLY DECIDED BY THE COURT OF APPEALS. THE COURT OF APPEALS HAS READ SECTION 2(m) OUT OF THE PRICE CONTROL ACT.

Respondent advances two arguments in support of the decision of the Court of Appeals. Neither argument meets the issue raised in the petition that the effect of the decision of the Court of Appeals is to read Section 2(m) out of the statute.

1. First, respondent argues that the announcement either had general applicability and therefore is "in effect" a regulation (Br. 9-11), or that the announcement had particular applicability and therefore is "in effect" an order (Br. 11-12). From this premise respondent contends that "it follows inevitably" that a suit to set aside this unlawful administrative action is cognizable only in the Emergency Court of Appeals by virtue of Section 204(d) of the Price Control Act, irrespective of the provisions of Section 2(m). (Br. 16-19.) The result of this argument, if sustained, will be to make the jurisdictional provisions of Section 204(d) applicable to any and all administrative action taken with relation to the subsidy program, and to leave absolutely no area for the operation of Section 2(m). In other words, respondent seeks to read Section 2(m) out of the statute and to attribute to Congress an intention that enactment of Section 2(m) was a purposeless and idle ceremony.

Respondent's argument is untenable on its face. The very least to be said is that Section 2(m) and Section 204(d) are to be read together. Otherwise Section 2(m) is given no meaning or effect. When the sections are construed together it clearly appears that Congress vested

the district courts with jurisdiction to hear and determine challenges to administrative action imposing conditions or penalties on the payment of subsidies "*relating to* the production or sale of agricultural commodities" which are challenged as being unauthorized by the lawful statutes and lawful regulations authorizing the payment of such subsidies. That is precisely the case at bar. Petitioner does not challenge the regulation. Rather it contends the administrative action was not authorized by the regulation or the directives or the price control acts.

Petitioner suggested it was at a loss to perceive what possible application could be made of Section 2(m) in the light of the interpretation of that section advanced by respondent and erroneously accepted by the Court of Appeals. Respondent has failed to point out any possible use to be made of Section 2(m) should the decision stand. Indeed, none is possible, since petitioner's interpretation of Section 204(d) has the clear and unmistakable effect of reading Section 2(m) out of the statute, and of rendering it of no force and effect.

2. Secondly, respondent argues that Section 2(m) does not apply because meat is not an agricultural commodity. The fact that meat is not an agricultural commodity is obvious and is conceded by petitioner. But the issue is not whether meat is an agricultural commodity.[1] The issue is whether the livestock slaughter subsidy here involved is one "*relating to* the production or sale of agricultural commodities," as provided by Section 2(m).[2]

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[1] As petitioner indicated (Pet. 15-16, 22-23), the majority of the Court of Appeals fell into this same error, and decided the case on this wholly erroneous misunderstanding of the basic issue, and the position of the parties with respect to it.

[2] Section 302(1) of the Price Control Act provided that "the term 'agricultural commodity' includes livestock". 50 U.S.C.A. § 942.

In short, was the subsidy one "relating" to the "*production or sale*" of livestock, which respondent concedes to be an agricultural commodity? The history and scope of the subsidy program which is fully set forth in the petition (essential portions of which are either omitted from or misstated in respondent's brief in opposition), makes it abundantly clear that the purpose of the livestock slaughter subsidy was to stimulate and maintain maximum production, sale and equitable distribution of livestock, and was intended and was in fact for the benefit of the livestock producer. (Pet., 7-11, 23-24.)

As was pointed out in the petition (Pet., 23-24), the livestock slaughter subsidy related not only to the production of livestock but to its sale as well, because it required that in order to obtain payment of the subsidy in full the livestock slaughterer must have purchased the slaughtered livestock within the price ranges established by the subsidy directives and regulations; because the producer received the benefit of the subsidy through the livestock sale and purchase transaction; because it was designed to afford a price support for the producer; and and because it served to induce the producer to sell and the purchaser to buy livestock in normal, legitimate channels.

In order to support its construction of Section 2(m), respondent blandly reads out the key phrase "relating to." The Court of Appeals did likewise. We respectfully urge that the plain force and effect of this statutory phrase cannot be avoided merely by ignoring its existence. For the many reasons we have urged in the petition, Section 2(m) has clear application to the livestock slaughter subsidy here involved. (Pet. 22-24.)

II.

RESPONDENT'S STATEMENT OF THE CASE EITHER IGNORES OR MISSTATES THE FUNDAMENTAL FACTS.

Respondent's statement is both misleading and inaccurate. It is in the pattern of that which respondent presented to the Court of Appeals and which led that Court into the error of reversing the District Court. The alleged case recited in respondent's statement is not the one presented on the record. The very heart of the case, consisting of the basic and controlling directives authorizing and implementing the subsidy program upon which the District Court relied, are passed over and ignored.

The desirability of a succinct reply proscribes us from recounting all of the instances to which we have reference. However, allusion to the most fundamental of the misstatements and omissions will suffice to make our point and to emphasize that reference must be had to our petition for a full, fair, accurate and succinct statement of the case.

The resolution of the issue of jurisdiction on the part of the District Court under Section 2(m) depends upon whether the subsidy was one "relating to the production or sale of agricultural commodities [livestock]." Each of the omissions and other defects in respondent's statement, to which attention is hereinafter called, emphasizes that respondent avoids that issue.

1. In the face of recitals in the basic directives of the Director of Economic Stabilization which created and authorized the subsidy (Pet., pp. 8-9) that the subsidy was designed (a) to insure maximum production of livestock, (b) to maintain livestock prices consistent with the purposes of the stabilization program, (c) to insure equitable

distribution of livestock among slaughterers, (d) to regulate or control purchases of livestock by slaughterers, and (e) to insure that the benefits of the livestock slaughter subsidy would inure to livestock producers, and in the face of a regulation which required the slaughterer to pass the subsidy benefits back to the livestock producer (Pet., p. 10), respondent boldly, repeatedly and without equivocation, refers to the subsidy as a "meat" subsidy. Thus it not only begs the question presented but ignores the controlling factors bearing upon the issue.

2. Accordingly, and contrary to the statement at page 3 of respondent's answer, the subsidy was not one to compensate slaughterers for the 10 per cent roll-back on meats.

3. Respondent says petitioner's suit was one claiming "meat subsidy payments". (Ans., p. 3.) The statement is untrue. The suit was one for a declaratory judgment that Announcement No. 1 was invalid and that petitioner was entitled to receive payment of the unpaid balance of its "livestock slaughter subsidy claims."

4. Respondent makes reference to the initial temporary and exploratory subsidy program of June, 1943 (Ans., p. 3). Respondent then jumps from that point to the lapsing of the Emergency Price Control Act in June, 1946, thus creating the impression that nothing of significance occurred in the interim.

In so doing, respondent omits all reference to the actual implementation and development of the subsidy program in question in October, 1943 when the basic directive of the Director of Economic Stabilization was promulgated. (Pet., pp. 7-11; Appendix, pp. ii-v.) Nor was any reference made to subsequent directives which further implemented the basic directive. (Footnote 4, Pet., p. 10.) In so doing, respondent omits, as did the Circuit Court of Appeals, the very heart of the case.

5. Respondent makes an almost casual reference to the fact the Price Control Act lapsed on June 30, 1946 (Ans., p. 4), but omits to mention the important fact that in the month following the lapsing of the Price Control Act respondent knowingly paid livestock slaughter subsidy claims in full irrespective of whether the slaughterer had meat inventory on hand on June 30, 1946 resulting from slaughter operations prior to that date. (Pet., p. 11.)

6. Respondent recites the fact that the Director of Economic Stabilization ordered restoration of the subsidy program effective September 1, 1946 (Ans., p. 5), but fails to make reference to the fact that in so doing the Director issued a finding that restoration of the subsidy was necessary in order to insure the maximum necessary production and distribution of livestock. (Pet., pp. 11-12.)

7. Respondent states (Ans., p. 4) that it promulgated its Livestock Slaughter Payments Regulation No. 3, but fails to mention that the regulation was subordinate to the directive of October, 1943 and fails to make any mention whatsoever of the terms of the regulation. Thus respondent omits the facts, among others, that the regulation required the slaughterer to pass the benefits of the subsidy on to the livestock producer at the time he purchased the livestock (Pet., p. 10); that it provided for payment of the subsidy "on account of slaughter of livestock"; that it imposed subsidy payment reductions for failure of the slaughterer to pass the subsidy benefits on to the livestock producer at the time of purchase of the livestock (Pet., pp. 10-11); that it provided that termination of the regulation was not to affect "claims on account of livestock slaughter on or before the date of termination" (Pet., p. 30); and that it provided for the making of "Announcements" of the character here involved, as distinguished from so-called regulations or orders which are the words which respondent

employs at this late date to characterize its Announcement. (Pet., p. 27.)

8. Respondent states that meat prices rose sharply following decontrol on October 14, 1946. (Ans., p. 5.) The inference is that petitioner obtained a windfall. Respondent does not mention there was no proof as to when or at what prices petitioner was able ultimately to dispose of carcasses and other meat inventory on hand October 15, 1946. But more important, respondent does not mention that whatever increase in meat prices occurred on and after October 15, 1946 was completely offset by the fact that petitioner was required to sell at low controlled prices and without subsidy or other compensation the equally large meat and livestock inventories it had on hand September 1, 1946, which it had acquired at the high decontrol prices which prevailed during the June 30, 1946-August 31, 1946 decontrol period. One balanced the other. (Rec. 731-732, Findings 11-14.)

9. Respondent states that "meat price controls were in effect only through October 14, 1946". (Ans., p. 5.) No mention is made of price controls on livestock. The inference created is that there were none and that therefore the subsidy was keyed to "meat" prices. The fact is there were livestock price controls consisting of overriding price ceilings on livestock (Pet. p. 10, footnote 4), and a maximum-minimum livestock price range within which slaughterers were required to purchase livestock or suffer reduction of subsidy payments. These maximum-minimum livestock price range controls, which implemented the livestock subsidy directive of October, 1943 and the livestock slaughter regulation, were promulgated to insure that the subsidy benefits inured to the livestock producer at the time of the purchase of the livestock and in advance of the slaughter of the livestock. (Pet., appendix p. iii.)